Supreme Court, U. S.
FILED
JUL 2 1976
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

* * *

NO. 75-928

* * *

W. J. ESTELLE, JR., Director, Texas Department of Corrections, et al.
Petitioners

V.

The Hon. WILLIAM WAYNE JUSTICE, U.S. District Judge for the Eastern District of Texas,
Respondent

* * *

PETITION FOR REHEARING

* * *

JOHN L. HILL
Attorney General of Texas

DAVID M. KENDALL
First Assistant Attorney General

JOE B. DIBRELL, JR.
BERT W. PLUYMEN
Assistant Attorneys General

P. O. Box 12548
Austin, Texas 78711

Attorneys For Petitioners

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

* * *

W. J. ESTELLE, JR., Director, Texas Department of Corrections, et al.,

Petitioners

V.

THE HONORABLE WILLIAM WAYNE JUSTICE, U. S. District Judge for the Eastern District of Texas,

Respondent

* * *

PETITION FOR REHEARING

* * *

Petitioners respectfully pray that this Honorable Court reconsider its denial of the petition for a writ of certiorari in this cause, and for good grounds therefor submit the following:

As is evident from the Petition for Writ of Certiorari and the Brief for the United States in Opposition, the pivotal argument in this cause concerns whether the United States has authority to intervene in prison suits such as the present. Petitioners have vigorously argued from the very beginning that the United States has no authority whatsoever so to act. The Attorney General of the United States, on the other hand, has steadfastly maintained throughout the proceedings below and in this Court that the United States does have such authority. Thus, it was with considerable surprise and shock that Petitioners learned within the last fortnight that the Attorney General was requesting the Congress

to give him the authority to intervene in a cause such as the present *at the very time* the United States was preparing to respond in this Court that it was already blessed with such authority.

On February 18, 1976 and at a time when his subordinates were preparing the Brief for the United States in Opposition, the Honorable Edward H. Levi, Attorney General of the United States, requested the Congress to give him "authority to intervene in cases of public importance challenging the constitutionality of conditions in state institutions occupied by involuntarily confined persons." Letter from Edward H. Levi to the Speaker of the House of Representatives, February 18, 1976. (Appendix at 1 - 3). That is precisely the authority which the office of the Attorney General has claimed throughout these proceedings as already being within its possession. The Attorney General's letter referred to an enclosed document which was introduced the following day by Representative Railsback as H. R. 12008, 94th Cong., 2d Sess. (1976),[1] and which provides in pertinent part:

> "SEC. 3. Whenever an action has been commenced in any court of the United States seeking relief from conditions which deprive persons involuntarily confined in State institutions of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, the Attorney General for or in the name of the United States may intervene in such action upon timely application if the Attorney General certifies that the case is of general public importance. In such case the United States shall be entitled to the same relief as if it had instituted the action."

---

[1]See Appendix at 4 -6.

Subsequent to discovering the foregoing, Petitioners further learned that on January 29, 1975, another bill, H.R. 2323, 94th Cong., 1st Sess. (1975), had previously been introduced into the Congress which would have granted identical authority to the Attorney General (Appendix at 7 -8), but that no Congressional action had been taken on such legislation.

Upon learning of Mr. Levi's request to the Congress and the introduction of his proposed bill as H.R. 12008, Petitioners attempted to obtain from the Department of Justice the relevant materials documenting the Department's desire and need for such authority to intervene. However, after being advised that such materials do in fact exist, Petitioners' representative was told that the Department would not release such material in view of *the instant litigation* in this Court and that formal channels should be pursued. (Appendix at 9 - 11). On the next day, June 23, 1976, the Governor and the Attorney General of the State of Texas filed a formal request for this information pursuant to the Freedom of Information Act, 5 U.S.C. §552 (1967). (Appendix at 12 - 13). Due to the lack of cooperation from the Department of Justice and its remaining time to respond to the formal request, Petitioners are unable to apprise the Court fully at this time as to the extent of wilfullness with which the Department of Justice has acted outside its lawful authority in this case and numerous others.

It is an affront to the dignity of the states of this Union and their law abiding citizens that, two hundred years after the creation of our federal system of government, a situation such as the present is permitted to exist in this country. With the aid of the federal district courts, the United States Department of Justice has the ability simply to ignore the lawful bounds of its powers and

BLEED THROUGH

POOR COPY

proceed against states all over this nation,[2] secure in its knowledge that no effectual post-judgment remedy is available to stop it.

CONCLUSION

For all of the foregoing reasons, Petitioners respectfully pray that this Petition for Rehearing be granted and that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

JOHN L. HILL
Attorney General of Texas

DAVID M. KENDALL
First Assistant Attorney General

JOE B. DIBRELL, JR.
Assistant Attorney General

BERT W. PLUYMEN
Assistant Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711

Attorneys For Petitioners

[2]By its own admission, the Department of Justice has intervened in actions in numerous United States Circuits. Appendix to Petition for Writ of Certiorari at 43 -45; *CF. Estelle v. Justice*, No. 75-928 (U.S., June 7, 1976) (Rehnquist, J., dissenting).

CERTIFICATE OF COUNSEL

I, Joe B. Dibrell, Jr., do hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and further certify that it is restricted to the grounds specified in Rule 58(2) of the Rules of the Supreme Court of the United States.

JOE B. DIBRELL, JR.
Assistant Attorney General

CERTIFICATE OF SERVICE

I, Joe B. Dibrell, Jr., certify that three copies of the foregoing Petition have been served by placing same in the United States Mail, First Class, Certified and Postage Prepaid, on this the _____ day of July, 1976, addressed to:

Hon. Wm. Wayne Justice
U.S. District Judge
Eastern District of Texas
P.O. Box 539
Tyler, Texas 75701

Mr. Jack W. Flock
Mr. Michael A. Hatchell
Fifth Floor
Citizens 1st. National Bank Bldg.
Tyler, Texas 75701

Mr. Roby Hadden
United States Attorney
310 Federal Building
Tyler, Texas 75701

Mr. John C. Hoyle
Attorney at Law
U.S. Department of Justice
Washington, D. C. 20530

Mr. Stanley Pottinger
Assistant Attorney General
Department of Justice
Washington, D. C. 20530

Mr. William B. Turner
Attorney at Law
12 Geary Street, 8th Floor
San Francisco, California 94108

JOE B. DIBRELL, JR.
Assistant Attorney General

POOR COPY

BLEED THROUGH

APPENDIX

Office of the Attorney General
Washington, D. C. 20530

IDENTICAL SUBMISSION
TO THE
VICE PRESIDENT

Feb. 18, 1976

The Speaker
House of Representatives
Washington, D. C. 20515

Dear Mr. Speaker:

Enclosed for your consideration and appropriate reference is a legislative proposal "To improve the administration of State institutions holding persons involuntarily confined, and for other purposes."

The draft bill would authorize the Attorney General to bring suit to prohibit a State or its agents from pursuing a "pattern or practice" of denying the constitutional rights of persons involuntarily confined. However, that power could not be exercised unless the State, after notice, had failed to correct the alleged constitutional violations within a reasonable time. The Attorney General would also have authority to intervene in cases of public importance challenging the constitutionality of conditions in state institutions occupied by involuntarily confined persons.

This proposed legislation would operate to upgrade state prison conditions. It would thereby help to eliminate the current distortion in the sentencing process and the breeding of career criminals which result from inhumane penal institutions. As the President observed in his Crime Message of June 19, 1975:

BLEED THROUGH

POOR COPY

> When a defendant is convicted, even for a violent crime, judges are too often unwilling to impose prison sentence, in part because they consider prison conditions inhumane. Moreover, a cruel and dehumanizing penal institution can actually be a breeding ground for criminality. In any case, a civilized society that seeks to diminish violence in its midst cannot condone prisons where murder, vicious assault, and homosexual rapes are common occurrences.

The draft bill would also require individuals involuntarily confined in state institutions to exhaust any available "plain, speedy, and efficient state administrative remedy" before bringing a civil rights suit in federal district court under 42 U.S.C. 1983. The Supreme Court has interpreted section 1983 to preclude federal courts from requiring exhaustion of state administrative remedies. See Steffel v. Thompson, 415 U.S. 472, 473 (1974); Wilwording v. Swenson, 404 U.S. 248 (1971).

A major purpose of the draft bill is to encourage States to adopt effective inmate grievance procedures. Under current law, States have little incentive to establish such procedures because inmates can bypass them in filing section 1983 suits.

Another purpose of the draft bill is to reduce the burden on the federal judiciary of prisoner suits brought under

section 1983. Such suits are currently being filed at an annual rate exceeding 6,000, or approximately 5% of the civil caseload of all federal district courts. The overwhelming majority of these suits are frivolous and many of the underlying disputes could be satisfactorily resolved through adequate grievance machinery. The Federal Bureau of Prisons has had inmate grievance machinery in operation since April, 1974. Approximately 40% of the grievances filed have been resolved in favor of the inmate.

In addition, section 1983 suits filed after an unsuccessful administrative hearing would be considerably easier to decide than is typically the case now. The record created during the proceeding would sharpen the issues in dispute.

It should be stressed that the exhaustion requirement does not deny prisoners access to federal courts in section 1983 suits. It requires only the "plain, speedy and efficient" state administrative remedies be exhausted before bringing such suits. A prisoner unsatisfied with the administrative decision would be permitted to file a section 1983 suit.

The Office of Management and Budget has advised that there is no objection to the submission of this proposal and that it would be in accord with the program of the President from the standpoint of the Administration's program.

Sincerely,

/s/ Edward H. Levi
Attorney General

Enclosure

BLEED THROUGH POOR COPY

94TH CONGRESS
2D SESSION

H.R. 12008

IN THE HOUSE OF REPRESENTATIVES

February 19, 1976

Mr. RAILSBACK introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To reduce the burden on the Federal courts of prisoners' suits brought under section 1983 of title 42, United States Code, to improve the administration of State institutions holding confined persons, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, as used in this Act, institution means ---

(1) any jail, prison or other correctional facility, or facility, or any detention facility;

(2) any facility in which juveniles are held awaiting trial or to which juveniles are committed for purposes of receiving rehabilitative care or treatment;

(3) any mental hospital;

(4) any institution or treatment facility for mentally retarded persons;

(5) any facility for the chronically physically ill or handicapped; or

(6) any nursing home where persons are involuntarily held.

Whenever the Attorney General has reasonable cause to believe that a State or its agents are subjecting persons involuntarily confined in an institution to conditions which deprive them of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, and that such deprivation is pursuant to a pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities, the Attorney General is authorized to institute a civil action for or in the name of the United States in any appropriate district court of the United States against such parties and for such relief as he deems neccessary to insure the full enjoyment of such rights, privileges, or immunities.

SEC. 2. Prior to the institution of a suit under section 1, the Attorney General shall certify that he has notified appropriate officials of the institution of the alleged deprivations of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States; that he is satisfied that the officials have had a reasonable time to correct such deprivations and that such a suit filed by the United States is in the public interest.

SEC. 3. Whenever an action has been commenced in any court of the United States seeking relief from conditions which deprive persons involuntarily confined in State institutions of any rights, privileges, or immunities secured or protected

POOR COPY

by the Constitution or laws of the United States, the Attorney General for or in the name of the United States may intervene in such action upon timely application if the Attorney General certifies that the case is of general public importance. In such case the United States shall be entitled to the same relief as if it had instituted the action.

SEC. 4. Relief shall not be granted by a district court in an action brought pursuant to section 1979 of the Revised Statutes (42 U.S.C. 1983) by an individual involuntarily confined in any State institution alleging deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, unless it appears that the individual has exhausted such plain, speedy, and efficient State administrative remedy as is available: Provided, That, exhaustion shall not be required if it appears that there exist circumstances rendering such administrative remedy ineffective to protect his rights.

SEC. 5. It shall be unlawful to coerce, intimidate, threaten, or interfere with any person on account of his having pursued an administrative remedy or having made a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing pursuant to this Act. This section may be enforced in an appropriate civil action by such person or by the Attorney General.

94TH CONGRESS
1ST SESSION

H. R. 2323

IN THE HOUSE OF REPRESENTATIVES

January 29, 1975

MR. KASTENMEIER (for himself, Mr. EDWARDS of California, Mr. CONYERS, Mr. EILBERG, Mr. SEIBERLING, Mr. DRININ, Ms. HOLTZMAN, Mr. BADILLO, Mr. DIGGS, Mr. ROSENTHALL, Mr. PEPPER, Mr. MURPHY of New York, Mr. HELSTOSKI, Mr. BIESTER, Mr. ECKHARDT, Mr. HARRINGTON, Mr. KOCH, Mr. STOKES, Ms. ABZUG, Mr. ASPIN, Mr. METCALFE, and Mr. RANGEL) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To authorize actions for redress in cases involving the violation of the constitutional rights of inmates in State or local correctional facilities or jails.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. An inmate under this Act is any person confined in a State or local correctional facility or jail.

SEC. 2. Every person, including a unit of government, who, under color of law, causes any inmate to be deprived of any rights, privileges, or immunities secured by the Constitution and laws of the United States shall be liable to the inmate

POOR COPY

BLEED THROUGH

in an action for redress, including an application for a permanent or temporary injunction, restraining order, or other order for preventive relief.

SEC. 3. The Attorney General may, upon timely application, intervene in the name of the United States in any action commenced by an inmate under section 2 if he certifies that the case is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

SEC. 4. Whenever the Attorney General has reasonable cause to believe that any person or group of persons, including a unit of government, is engaged in a pattern or practice of resistance to the full enjoyment by an inmate of any rights guaranteed by the Constitution or laws of the United States, and that such denial of rights raises an issue of general public importance, he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice or denial of rights, as he deems necessary to insure the inmate the full enjoyment of his rights.

SEC. 5. In any action commenced pursuant to section 2 or 4, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person.

UNITED STATES SUPREME COURT

RUIZ

Plaintiff

V. Civil Action No. 5523
Eastern District of
Texas, Tyler Division

W. J. ESTELLE

Defendant

AFFIDAVIT OF FRANK H. SHEFFIELD, JR.

DISTRICT OF COLUMBIA, ss:

Frank H. Sheffield, Jr., being duly sworn, deposes and says:

A conversation was held between:

Frank Sheffield
Natural Resources Coordinator
Texas Office of State-Federal Relations
1019 19th Street N.W. Suite 830
Washington, D. C. 20036

and

Brian K. Landsburgh
Chief, Appellate Section
Civil Rights Division
Dept. of Justice
Washington, D. C. 20530

in Room 5740 Justice Department Building on June 22, 1976

Summary of conversation:

Sheffield met with Landsburgh to request copies of background material prepared by the Justice Department with respect to proposed Federal legislation H.R. 12008,

BLEED THROUGH POOR COPY

by Railsback, 94th Congress. Sheffield said the request was on behalf of the Texas Attorney General.

1. Landsburgh asked if Texas had an interest in the legislation. Sheffield replied "yes"

2. Landsburgh asked if the interest involved pending litigation. Sheffield replied "yes, at the Supreme Court level."

3. Landsburgh stated that he had the relevant materials which would document the Department's desire to seek authority to intervene in actions where constitutional violations are alleged, but that he was reluctant to provide them to me since he (Landsburgh) was not the Attorney in charge of the litigation.

4. Landsburgh first telephoned and then took Sheffield to see Jesse Queen, who Landsburgh said would be the appropriate person to respond to the request.

A conversation was held between:

Frank Sheffield

and

Jesse H. Queen
Chief, Public Accommodations and
Facilities Section
Civil Rights Division
Dept. of Justice
Washington, D. C. 20530

in Queen's office, Justice Dept. Bldg. on

June 22, 1976

Summary of Conversation:

1. Sheffield stated that he would like to see or receive copies of any memoranda or other background documents explaining the Department's policies and views on H.R. 12008, by Railsback, 94th Congress.

2. Queen, after leaving the room for a few moments, returned to say that the Department would not release such material in view of the pending litigation related thereto and that Texas should pursue the material through the discovery process or through a Freedom of Information Act request, if it so desired.

/s/ Frank H. Sheffield, Jr.
Frank H. Sheffield, Jr.

The foregoing affidavit was subscribed and sworn before me on this 24th day of June, 1976.

/s/ Janice Muncy
Notary Public, District of Columbia

My Commission expires July 31, 1980.

THE STATE OF TEXAS
OFFICE OF STATE-FEDERAL RELATIONS

June 23, 1976

Dolph Briscoe
Governor

Harry E. McAdams
Director
Washington Office

Dennis L. Thomas
Associate Director
Austin Office

Deputy Attorney General
Department of Justice
Washington, D. C. 20530

Dear Sir:

FREEDOM OF INFORMATION ACT REQUEST

This request for information is submitted pursuant to the Freedom of Information Act, 5 U.S.C. 552, and the Department of Justice regulations promulgated thereunder, 28 C.F.R. 16, on behalf of the Governor and Attorney General of Texas.

Description of Materials Requested:

The above-named officials are seeking copies of or the right of inspection of memoranda, background documents, briefing materials, correspondence and any and all other information pertinent to the legislative history, underlying policy, need for, drafting of, or action on H.R. 12008, by Railsback, 94th Congress, especially with regard to Section 3 thereof.

Pending Litigation:

The issue involved in Section 3 of H.R. 12008, namely whether the Attorney General has the authority to intervene in actions by persons involuntarily confined in State institutions who allege deprivation of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, is the subject of litigation, Ruiz v. Estelle, currently pending before the United States Supreme Court on a motion for rehearing following denial of a writ of certiorari.

In making your response to the request, I would be grateful if you would notify me by telephone at 202-223 3265 so that the response may be picked up in person rather than transmitted by mail.

Thank you for your assistance.

Sincerely,

/s/
Harry E. McAdams

cc: Governor Dolph Briscoe
Attorney General John Hill

1019 Nineteenth Street, N.W., Suite 830, Washington, D. C. 20036, 202/223-3265

Post Office Box 13005, Sam Houston State Office Building, Austin, Texas 78711 512/475-7805

POOR COPY